IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Suit No.2613 of 1984

M/s Haldyn glass Works Pvt. Ltd. .. Plaintiff

V/s

1. The Oriental Fire and General
Insurance Co. Ltd.
2. Maharashtra State Financial
Corporation,
3. Industrial Development Bank of India
4. State Bank of India .. Defendants

Shri Z.B.Kamdia i/b M/s Amarchand and Mangaldas and
S.A.Shrodff for plaintiffs
Shri R.V.Samuel for the defendant no.1

CORAM:S.R.SATHE,J.

DATED:14th Dec. 2005

ORAL JUDGMENT :-

1. The plaintiff company has filed this suit against the defendant no.1 - M/s Oriental Fire and General Insurance Company for recovery of Rs.4,91,187/- being an amount of loss suffered by the plaintiff as a result of malicious and mischievous acts committed by

their workmen working, in Production and Quality Control Department, covered under the riots and strike damage insurance policy and malicious damage endorsement, issued by defendant no.1.

2. Plaintiffs case in brief is that the plaintiff is a private limited company having their manufacturing of glass bottles factory situated at Goregaon (East), Bombay. About 1000 workmen were working in their factory at the relevant time i.e. in the month of October 1983. The workmen had formed an union and forwarded a charter of demands in September 1983. Thereafter there were meetings between the plaintiff and union's representative. The union was asking for 30% bonus while plaintiff company was not agreeable that nut ready to give 15% bonus. As a result of this there was some dispute between the plaintiff and workmen's union.

3. According to the plaintiff since second shift of 19th October 1983 the workmen of production department and quality control department in collusion and in combination with one another started causing damage to the production at various levels in the following manners, viz.

a) the workmen on the bottle forming machine wilfully did not close the machines/moulds to blow

the molten glass properly in periodical intervals, which resulted in the loss of production and they wilfully threw the good bottles made by them.

b) The workmen wilfully and with malicious intention threw the bottles which were good and usable otherwise and as a result rendered a total loss.

c) The workmen who have to pass the bottles from the production conveyor to the lehr, deliberately allowed the bottles to fall and break thereby resulting in a large scale destruction of bottles.

d) Bottles kept on the lehr for annealing were broken and thrown into the cullet box. Thus, the workmen engaged in procession wilfully damaged the bottles.

4. When the plaintiff company noticed the mischievous and malicious acts of the workmen they published a notice on the notice board of the company and appealed to the workers not to resort to illegal and malicious activities. They also informed about the activities of the workers to the Senior Inspector of Police, Goregaon Police Station and other concerned

authorities. As a result of the above mentioned illegal activities of the workers the production had gone down considerably.

5. The defendant no.1 had issued 4 fire insurance policies dated 3-12-1982, 1-3-1983, 9-6-1983 and 5-9-1983 in favour of the plaintiff company and all the said policies were in existence when the above-mentioned acts were committed by the workmen. According to the plaintiff as per the said policies and in particular by riots, strike and malicious damage and malicious damage endorsement attached to the said policies the loss sustained by the plaintiff company as a result of the malicious acts of the workers was covered, hence plaintiff by their letter dated 22-10-1983 informed the defendant no.1 about the activities of the workers as well as the loss which was being caused to the plaintiff. The defendant no.1 by its letter dated 28-10-1983 informed the plaintiff that they have appointed Surveyors M/s C.P.Mehta and Co. to assess the loss. The Surveyor visited the plaintiff’s factory but did not submit any report and defendant no.1 also did not settle the plaintiff’s claim hence plaintiff field the present suit for recovery of amount of Rs.4,91,187/- and interest on the said amount at the rate of 21% p.a. from the date of the suit till realisation of the amount.

6. As the above mentioned policies were jointly issued in the name of the plaintiff and defendant nos.2 to 4, plaintiff joined defendant nos.2 to 4 as formal parties in this suit. Plaintiff, however, did not claim any relief against the defendant nos.2 to 4.

7. The defendant no.1 filed its written statement and admitted the issuance of 4 policies in favour of the plaintiff. However, the defendant no. 1 contended that defendant nos.2 to 4 ought to have been joined as co-plaintiffs and plaintiff is not entitled to claim damages under the policies from the defendants. The defendant no.1 denied the plaintiff's allegation that from second shift of 19th October 1983 the workmen of production department and quality control department in collusion with each other committed malicious acts and thereby caused wrongful loss to the plaintiff company. According to the defendant no.1 the plaintiff did not lodge any complaint with Police about the alleged acts of the workers nor they issued any memo to any of its workers for the alleged malicious acts committed by them. Besides this, the defendant no.1 also contended that it was very easy for the plaintiff to prevent the loss by resorting to certain other methods such as closing the process of production or by asking mischievous workers not to enter the factory or asking the quality control department to pack all the bottles and then carry out

the sorting etc. However, the plaintiff company did not resort to any such method and hence the defendant is not liable to pay any amount to the plaintiff.

8. The defendant also denied the plaintiff's allegations that loss suffered by the plaintiff is fully covered under the riot, strike and malicious damage endorsement. According to the defendant endorsement referred cover only direct losses excluding any amount of any kind by any person. So, according to the defendant even if it is presumed that loss has been caused to the plaintiff still the same is not covered by the malicious damage endorsement and as such the defendant is not liable to make any payment to the plaintiff.

9. The defendant also contended that on receipt of plaintiff's letter they had in fact appointed Surveyor and the Surveyor has also opined that alleged loss in question is not covered under the policy. Hence on all these grounds the defendant Insurance Company prayed for dismissal of the suit.

10. The defendant nos.2 to 4 did not file any written statement.

11. On the pleadings of the parties this court (Coram:S.U.Kamdar,J) has framed the following issues.

I have given my findings as mentioned against the same.

ISSUES

1. Whether the plaintiff proves that it is entitled to claim and receive such amounts from the 1st defendant under the different policies as set out in paragraph 3 of the Plaint?	Plaintiff is entitled to get certain amount but not as claimed.
2. Whether the plaintiff is accordingly entitled to a decree in the sum of Rs.4,91,187/- and interest thereon at the rate of 21% per annum till payment and/or realisation?	Plaintiff is entitled to get Rs.1,35,135.50 and interest as mentioned in final order.
3. Whether the 1st Defendant proves that the plaint discloses no cause of action as against the 1st defendant?	No.
4. Whether the 1st Defendant proves that the plaintiff is not entitled to any claim under the insurance policies as alleged by 1st defendant?	No
5. Whether the 1st Defendant proves that	No

the suit is not maintainable on account of the fact that the defendant no.2, 3 and 4 have not been joined as co-Plaintiffs?

6. What relief? As stated below in final order.

12. It is not in dispute that plaintiff company had taken 4 fire insurance policies from defendant no.1 insurance company and the said policies were with riot and strike damage endorsement and malicious damage endorsement. All the said policies were in existence during the period from 20-10-1983 to 25-10-1983 when the alleged malicious acts were committed by the workmen in the plaintiff's factory.

13. In order to succeed in this suit plaintiff has to prove firstly that during the above mentioned period the workers acted with malicious intention of causing loss to the plaintiff company.Secondly, the plaintiff must prove that as a result of the said activities of the workers, plaintiff actually suffered loss and thirdly, the plaintiff must prove that such loss is covered under malicious damage endorsement of the policy. In order to prove its case the plaintiff company has examined two witnesses, viz. N.D.Shety,Managing Director of the plaintiff company

and Mr.V.N.Shetty, Manager, Personnel and Industrial Relations of the plaintiff company, and have produced certain documents. As against this, in order to support their contention the defendant no.1 has examined witness Nilan D. Mehta, who carried out survey and K.B.Raut, an employee of defendant company. The defendant has also produced certain documents.

14. Plaintiff's witness N.D.Shetty, Managing Director has stated in his affidavit filed in lieu of examination in chief that during the period September to November 1983 workers of plaintiff factory indulged in various malicious activities and unfair trade practices resulting in damage and loss to the plaintiff's assets and materials. These activities were carried out by them with a view to extort money and compel plaintiff in submitting to the workers illegal charter of demand for bonus issued in the first week of September 1983. The defendant no.1 has not challenged this statement and there is no reason to reject the plaintiff's case that few days prior to the alleged incident there was dispute between the plaintiff company and union on account of workers demand for bonus.

15. In order to find out whether the workers of the plaintiff company had resorted to illegal, malicious and mischievous activities and thereby caused loss in

production, it is necessary to know what is the process of manufacturing of bottles. The plaintiffs witness has narrated the said process as under :-

i) The raw material (cullet, i.e. crushed glass, silica, sand, soda and etc.) is fed into the furnace for melting and formation of molten glass. At the relevant time the plaintiff had 2 furnaces of 24,000 tonnes capacity per annum (the value of which is at least Rs.30 lacs each) and 6 annealing lehrs.

ii) The molten glass is drawn through a feeder mechanism into the forming mould (this is known as the "draw", and corresponds to the amount of raw material put in)

iii) From the forming mould the semi-formed bottles are manually removed, improperly formed bottles are rejected and properly formed bottles are manually moved (by placing the same on a conveyor belt), to the finishing mould. (The semi formed bottles are automatically tipped out of the mould and if the worker on duty does not immediately manually move the same to the conveyor belt, the bottle drops to the floor and is broken).

iv) In the finishing mould, the bottles are finally formed by compressed air being blown into them.

v) From the finishing mould, there is yet again a selection process, where sorters reject defective bottles throwing them into a rejection bin, and manually transfer properly formed bottles to conveyor belts, which then transfers the bottles to lehrs for annealing.

vi) The bottles pass through the lehr for a period of nearly three hours from where bottles are checked for quality control by sorters. The properly formed bottles are manually removed by the workers and packed for sale by packers in the Quality Control Department. The rejected bottles have to be manually removed by the workers and thrown by them into a rejection bin.

16. The said witness has specifically stated that during the period from 20-10-1983 to 25-10-1983 the workers of the plaintiff company committed following acts, viz.

i) workers deliberately rejected good quality semi formed bottles and finished bottles;

ii) half blown and semi finished bottles were

placed in the lehr (where only finished bottles were to be placed)

iii) Waste bins were piled up with both defective and properly formed bottles;

iv) jamming of the lehr belt by failing to move bottles, causing heavy accumulation and thereby not letting the lehr belt and the gears move freely;

v) the workers of quality control department, with malicious intention, rejected good bottles as bad bottles.

17. He has also stated that above mentioned acts were committed deliberately with malicious intention of causing damage to the plant and property and loss of production. It is needless to say that burden lies on the plaintiff to prove that above mentioned acts were in fact committed by the workers. In order to prove the said acts plaintiff is relying only on evidence of witness N.D.Shetty and V.N.Shetty. Both of them have stated that workers committed above acts but besides the evidence of these two interested witnesses there is no other independent evidence to corroborate their testimony.

18. Shri Samuel, learned Advocate for the defendant

no.1 strenuously argued before me that under the circumstances of the case reliance cannot be placed on the evidence of these two witnesses particularly when we find that the plaintiff company had not filed any criminal complaint against the workers who were indulging malicious and mischievous acts and causing damage to the plaintiff's property. He also submitted that admittedly the plaintiff company has not issued even a memo to any of its workers for the alleged illegal activities committed by them. It was submitted that if really such illegal activities would have been committed, any prudent person would have filed a complaint and taken some action against the erring workmen but from the very fact that no such action is taken by the plaintiff company it has to be held that the plaintiff has failed to prove that the workers were indulging illegal activities.

19. It is an admitted fact that though defendant no.1 company had received a letter from the plaintiff about the alleged instance on 25-10-1983 the Surveyor visited the factory only on 29-10-1983 and at that time the production as well as other situation in the company had achieved normalcy. So, the question arises how to find out whether the plaintiff had sustained loss as alleged by them. For that purpose one has to rely on the notices and letters issued by the plaintiff company at the relevant time from the

and conduct of the plaintiff. While considering this, we find that first notice about alleged illegal activities of the workers was published by the plaintiff company on 20-10-1983. However, if we peruse the said notice we find that though it is mentioned in the same that production and quality control workmen since second shift of 19th October 1983 have launched the most pernicious method and dishonest acts of various unfair labour practises and other illegal acts in the form of shouting slogan against the management staff, hooting, booing, cat calling and the like and creating commotion and scene in and around the factory premises. Plaintiff company has not specifically mentioned any of the acts which now the plaintiff's witnesses have stated in their affidavit in the said notice. The words the act of various unfair labour practice or pernicious method are very vague. Merely from these words one cannot jump to the conclusion that by virtue of the said notice the plaintiff company had made it clear that workers were rejecting good quality, semi formed bottles and finished bottles or half blown and semi finished bottles. If really the workers would have resorted to above mentioned mischievous acts then certainly plaintiff would have specifically mentioned the same in the notice dated 20-10-1983. So, under such circumstances the said notice will not help the plaintiff to prove that workers committed such acts on

20-10-1983.

20. The next notice that has been brought on record by the plaintiff is dated 21-10-1983. It is not in dispute that such notice was issued. From the perusal of the said notice we find that in this notice also plaintiff company had observed that from the first shift of 20-10-1983 the workers launched most pernicious method and dishonest act of go slow wilfully and as a result of go slow normal production went down by over 70%. Besides workers were indulging in various unfair labour practices and other illegal acts in the form of shouting slogans, hooting, booing, cat calling etc. Besides, this it is specifically mentioned in the said notice that in the quality control department, solely with the malicious intent of causing wrongful loss of revenue to the company, even good bottles were discarded as bad bottles in an organised manner. Merely because the plaintiff did not preserve such rejected bottles we cannot jump to the conclusion that the plaintiff's evidence in that behalf cannot be accepted. It is true that the plaintiff company has not lodged any complaint with the Police but at the same time we find that copy of this notice was sent to the Inspector of Police, Goregaon Police Station and to other concerned authorities including Minister of Labour and Secretary, Labour Government of Maharashtra and

Commissioner of Labour. It is also true that plaintiff company has not issued any memo to any of the workers. However, it is pertinent to note that plaintiff's witness has stated that at the relevant time the workers were indulging in go slow and other illegal activities and it was in fact necessary for the plaintiff company to handle the situation with utmost care otherwise there was possibility of workers resorting to more dangerous activities and thereby causing huge damage to the plaintiffs property. When the workers unanimously indulge in such activities then obviously it becomes very difficult for the management to take immediate action against all the workers or even against anyone of them. Management's required to handle the situation skilfully and see that the workers resort to normal working, so, under such circumstances it cannot be said that non filing of the complaint with Police or non issuance of any memo to erring workers is fatal to plaintiff's case. On the contrary it must be noted that though the situation in the factory was not happy and there was disturbance in the factory the management of the plaintiff company badly published notice on board wherein they specifically averred that quality control department solely with malicious intention of causing wrongful loss of the revenue to the company discarded good bottles as bad bottles in an organised manner. If really such thing would not have happened then the

management would not have returned to issue such notice. So, considering all the facts and circumstances, I am inclined to accept the version of the plaintiff that the workers in the quality control department were resorted to such acts whereby they were deliberately, with malicious intention of causing loss to the plaintiff company discarding good bottles as defective bottles. However, besides this the plaintiff has not proved any other overacts or malicious acts committed by the workers which caused damage to the plaintiff's production. If the workers would have carried out such other activities as mentioned by the witnesses, then certainly they would have made reference about the same in the notice or in the letter issued to the Insurance Company. However, there is no mention of other activities.

21. The question arises, as to for how many days the workmen in the quality control department were indulging in the act of rejecting good bottles as defective bottles and what is the loss suffered by the plaintiff as a result of the said malicious and mischievous act of the workmen. It is pertinent to note that evidence of plaintiff on this point is not consistent. Though in the plaint it is stated that such activities were carried out from 20-10-1983 to 25-10-1983, as mentioned earlier we find that in the notice dated 20-10-1983 the plaintiff has not

specifically mentioned that workers in the quality control department are rejecting good bottles as defective bottles. So, I am not at all inclined to hold that such activities were actually carried out by the workers on 20-10-1983. However, in the notice dated 21-10-1983 it is stated that workers in quality control department solely with malafide intention to cause wrongful loss to the company are discarding good bottles as bad bottles in an organised manner. As mentioned earlier one can safely accept this statement under circumstances of the case particularly when plaintiff's witness has also categorically stated that on that day workers were indulging in such activities. However, curiously enough we find that in the notice dated 20-10-1983 plaintiff had stated that since second shift of 19-10-1983 workmen started committing illegal acts while in the notice dated 21-10-1983 the plaintiff has stated that workers started indulging in such activities from first shift of 20th October 1983. So, we find that there is discrepancy in the plaintiff's evidence in this behalf. Then in the notice dated 22-10-1983 which was issued to the defendant company, plaintiff had specifically averred that quality control department workers with malicious intention of causing loss to the plaintiff are rejecting good bottles as defective bottles. So, it does appear that such activity was being carried out by the workers from 21st October 1983.

22. It is pertinent to note that admittedly the plaintiff company had filed a complaint under ULP Act before the Member, Industrial Court, Mumbai and on 24-10-1983 injunction order was passed by the Court whereby the workers were restrained from indulging in acts of force, violence or holding out threats, go slow, Gherao. From the perusal of the said order it is very clear that in that complaint the plaintiff company had not specifically sought any relief against the workers in respect of their alleged act of throwing or discarding good bottles as defective bottles. Moreover, once it is held that injunction was issued on 24-10-1983 it is very difficult to belive that in spite of the said injunction the workers were indulging in unfair activities. If really the workers would have continued with such illegal activities even after passing of the injunction order dated 24-10-1983 then plaintiff would have moved the court for taking action against the said workers for breach of injunction. Admittedly, plaintiff has not adduced any evidence to show that injunction order issued on 24-10-1983 was breached by workers. So, under such circumstances I am not inclined to hold that plaintiff has proved that on 24th and 25th October 1983 the workers in the quality control department of the plaintiff had destroyed good bottles as defective bottles. Under these

circumstances I hold that the plaintiff has only proved that on 21st, 22nd and 23rd October 1983 good bottles were thrown or discarded as defective bottles and thereby loss was caused to the plaintiff.

23. While considering the question of quantum of loss it must be noted that the plaintiff's stand in this behalf is also not consistent. Firstly, it must be noted that in the notice dated 21-10-1983 the plaintiff has averred "as a result of go slow normal output has been deliberately brought down by over 70% while in the notice dated 24-10-1983 the plaintiff has averred "workmen have still continued with most dishonest act of wilful go slow, as a result of which the normal output has been deliberately brought down by over 35%. In the notice dated 22-10-1983 addressed to the defendant no.1 the plaintiff has averred "that workmen in production and quality control department from 1st shift of 20-10-1983 have wilfully and maliciously damaged our semi finished and finished bottles as a result of this the normal output has been deliberately brought down by over 80%". Thus, it is very clear that plaintiff company is not consistent in its stand about the loss sustained. Naturally, once they have averred in the notice dated 24-10-1983 that normal output has been deliberately brought down by 35% it may not be proper to hold that normal out put has been brought down by 70%. So, merely because the

Surveyor has observed that shortage in production of bottles was estimated to be about 60% of normal output and company has suffered loss to the tune of Rs.4,95,043/-. we cannot accept the same. On the contrary, even according to the plaintiff the production was brought down by about 35% then it is safe to accept the loss of Rs.2,70,271/-. However, there is another important aspect of the matter. The loss determined by the Surveyor is on the basis that alleged activities of malicious nature were carried out by the workers on 20-10-1983 to 25-10-1983 but I have already mentioned above that there is no sufficient evidence on record to hold that the workers in quality control department discarded good bottles as defective bottles even on 20-10-1983 and 24th and 25th October 1983. So, I am not inclined to hold that such activities were carried out on those 3 days. So, reduction in the production on account of malicious act of discarding good bottles as defective bottles was only on 21st, 22nd and 23rd October 1983. The plaintiff has not given all details about the production of each day from 20th to 25th October 1983. Besides this even from the plaintiff's own evidence it appears that as a result of go slow tactics of the workers also plaintiff company sustained loss. So, under such circumstances the loss of Rs.2,70,271/- has to be reduced by 50% which comes to Rs.1,35,135-50 ps.

24. It is argued on behalf of the defendant no.1 that alleged loss is not covered by the malicious damage endorsement attached to the policies of the plaintiff. The learned Advocate also canvassed before me that as per the said endorsement loss arising due to omission on the part of any person is not covered and as it was the case of the plaintiff that surveyors did not pick up good bottles from lher and they were allowed to fall at the end,it has to be held that alleged loss sustained by the plaintiff due to such activities of the workers has to be termed as omission and as such not covered by the endorsement in question. It would be worthwhile to see what malicious endorsement says. It runs as follows :-

. In consideration of the payment of the sum of Rs.. additional premium it is hereby agreed and declared that the insurance under the said RIOT AND STRIKE DAMAGE ENDORSEMENT shall extend to include MALICIOUS DAMAGE which for the purpose of this extension shall mean

> Loss of or damage to the property insured directly caused by the malicious act but excluding any omission of any kind of any person (whether or not such act is committed in the course of a disturbance of the public place) not being an act

amounting to or committed in connection with an occurrence mentioned in Special Condition No.6 of the said Riot and Strike Damage Endorsement"

(Special condition no.6)

"This insurance does not cover any loss or damage occasioned by or through or in consequence directly or indirectly,of any of the following occurrence, namely -

a) Earthquake,Volcanic eruption or other convulsions of nature,

b) Typhoon,Huricano,Tornado,Cyclone or other atmospheric disturbance

c) War,Invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil War

d) Mutiny,riot,military or popular rising,insurrection, rebellion, revolution, military or usurped power, marital law of state of seize or any of the events or causes which determine the proclamation or maintenance of marital law

or state of stage.

Any loss or damage happening during the existence of abnormal conditions (whether physical or otherwise) which are occasioned by or through or in consequences, directly or indirectly or any of the said occurrence shall be deemed to be loss or damage which is not covered by this Insurance except to the extent that the insured shall prove that such loss or damage happened independently of the existence of such abnormal conditions.

In any action, suit or other proceeding where the company alleges that by reason of the provisions of this condition any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the insured.

e) Explosion except as stated on the face of the policy.

f) Burning, whether accidental or otherwise, of forest, bush and jungles and the clearing of lands by fire".

25. In the instant case even if it is assumed that workers did not pick up the bottles from lehr and the same were allowed to fall at the end, still then workers have done so with malicious intention of causing damage to the plaintiff's property and consequently loss to the plaintiff company. So, I am not inclined to hold that alleged act of workers can be termed as omission and hence excluded from the risk covered under the policies. Though it is true that the plaintiff has specifically stated that at the relevant time there was no strike or lock out and the workers were also indulging in go slow tactics it is very clear that the acts committed by workers do not fall under category of cessation of work. As mentioned earlier, plaintiff has proved that atleast on 3 days i.e. on 21st to 23rd October 1983 the workers working under quality control department deliberately with malicious intention of causing loss to the plaintiff discarded or threw good bottles as defective bottles. So, the defendant no.1 is liable to make good the loss sustained by the plaintiff company as mentioned above. Though the defendant no.1 had contended that defendant nos.2 to 4 ought to have joined as co plaintiffs and suit is bad on that count, the learned Advocate for the defendant no.1 has not pressed this point.

26. In view of the above discussion I have answered issue nos.1 to 4 accordingly,.

. Hence I pass the following order :

i. the defendant no.1 to pay plaintiff Rs.1,35,135-50 and future interest on the said amount at the rate of Rs.9% p.a. from the date of filing of the suit till the date of decree and further interest on Rs.1,35,135-50 ps. at the rate of Rs.6% p.a. from the date of decree till realisation of the amount.

ii. The defendant no.1 to pay plaintiff the proportionate costs of this suit and bear their own.

iii. The suit against defendant nos 2 to 4 stands dismissed with no order as to costs.

(S.R.SATHE,J.)